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Peculiarities of Terminating the Employment Contract with the Employee During Illness

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Abstract: In this article, the concept of independent employment contract and its fundamentals are an important part of the labor law, as well as the issues related to the calculation of the responsibilities of the parties to each other are analyzed. Specific features of terminating the employment contract with the employee during the period of illness were analyzed based on the experience of foreign countries. In this article, according to Article 165 of the Labor Code (Notice of termination of the employment contract at the initiative of the employer), the period of temporary incapacity for work, as well as the time when he performed state or public duties, is not included in the period of notice to the employee.

Keywords: employment contract, contract, conditions, employees, specific rights, obligations, sick leave.

Although the current Labor Codes adopted by the CIS countries are close to each other in terms of structure and content, there are differences between them. This is also emphasized by I.Y. Kiselev: "The Labor Code of Kyrgyzstan, Azerbaijan, Belarus, Tajikistan, Moldova, Ukraine, the Labor Code of the Republic of Kazakhstan, other CIS republics, and the Labor Code of Russia have a lot in common. and at the same time, each of them has its own characteristics in solving labor relations"[1]. According to Article 161 of the current Labor Code, the termination of an employment contract concluded for an indefinite period, as well as a fixed-term employment contract until the end of its term, must be based on the initiative of the employer.

The existence of one of the following reasons (grounds) means that the termination of the employment contract is justified:

1) the organization (its separate division) has been terminated by the decision of its founders (participants) or the body of a legal entity authorized to do so by the founding documents, or the activity has been terminated by an individual entrepreneur;

2) a change in the number or state of the employees of an organization (its separate division), a sole trader, related to a change in technology, production and labor organization, a reduction in the volume of work (products, services);

3) that the employee is not suitable for the position he holds or the work he performs due to insufficient qualifications;

4) the employee's regular violation of his labor obligations. First, the employee was subjected to disciplinary or financial responsibility for violating labor obligations, or repeated disciplinary misconduct by the employee within one year from the date of the application of measures of

[1] *Киселев И.Я. Сравнительное и международное трудовое право. Учебник для вузов. М.: Дело, 1999. С. 370-371.*

influence provided for in the labor legislation and other legal documents on labor. the fact that the act was committed is a systematic violation of labor obligations;

5) that the employee grossly violated his labor obligations once. Determining the list of one-time gross violations of labor obligations, which may lead to the termination of the employment contract concluded with the employee, is carried out in accordance with Article 162 of this Code;

6) other reasons (reasons) specified in this Code and other laws.

In European countries (Great Britain, Germany, France, Austria and other countries), the grounds for termination of the employment contract are not separately classified. In European countries, it can be seen that the grounds for terminating the employment contract with circumstances beyond the discretion of the parties are not clearly indicated[2].

If we analyze the norms of the Labor Code of the Republic of Kazakhstan, many changes and additions have been made to it, it was adopted in a new version on November 23, 2015 and entered into force on January 1, 2016.

According to Article 57 of the Labor Code of the Republic of Kazakhstan, the following cases are the basis for the termination of the employment contract regardless of the discretion of the parties:

- withdrawal of the permit issued to foreign workers by local executive bodies;
- entry into force of a court sentence that sentenced an employee or an employer to a physical person, if this prevents the continuation of labor relations;
- employee or employer - death of a natural person, being declared dead by a court or missing;
- if the court finds the employee to be incompetent or limited, and as a result the employee loses the opportunity to continue employment;
- if the employee who previously performed the same job is reinstated;
- the employee is called up for military service, law enforcement agencies, or other special state bodies, in this case, the employment contract must be terminated within three days from the date the employee has the relevant document[3].

According to Article 161 of the Labor Code, a 14-day written notice is required to terminate the employment contract on one's own initiative. In practice, there may be a question whether these principles are applied even when the employee is sick. According to Article 163 of the Labor Code, it is not allowed to terminate the employment contract at the initiative of the employer during the period of temporary incapacity for work and during the period of leave stipulated by the labor laws and other regulatory documents. , except when the enterprise is completely liquidated. Therefore, it is not allowed to cancel the employment contract at the initiative of the employer when the employee is sick, except for cases where the enterprise is completely liquidated. But according to other grounds, for example, with articles 132, 157, 158, 160 and other articles, the employment contract can be canceled even when the employee is sick. Regarding the issue of the notice period, according to Article 165 of the Labor Code (Notice of termination of the employment contract at the initiative of the employer), the period of temporary incapacity for work, as well as the time when he performed state or public duties, is not included in the notice period of the employee , with the exception of the termination of labor relations as a result of the termination of the enterprise. In the above analysis, we are talking about the warning about the termination of the employment contract at the initiative of the employer. The 14-day and other notice periods provided for in Article 160 of the Labor Code shall apply even if the employee is ill. So, to sum up, during the 14-day notice period of

[2] Stephan Hardly, Mark Butler. Europan Employment Laws: A comprative guide (3rd edition). Great Britain. Ltd by: Short Run Press, 2016. – P. 113-142.

[3] *Информационно-правовая система нормативных правовых актов Республики Казахстан – https://adilet.zan.kz*

termination of the employment contract by the employee on his own initiative, if the employee falls ill, the notice period will expire, and after the expiration of the period, the contract may be terminated even if the employee is ill . The Regulation "On the procedure for the appointment and payment of benefits under the state social insurance" (registered by the Ministry of Justice of the Republic of Uzbekistan on May 8, 2002 with the number 1136) According to Clause 11, the allowance for temporary incapacity for work is granted from the first day of the loss of working capacity until it is restored or until the disability is determined by the Medical and Social Expertise Commission (TIEK), even if the employment contract with the employee is terminated during this period. is given. Therefore, even if the employment contract with the employee is terminated, the incapacity for work allowance is given for the entire period of illness.

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